

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Multi-Association Group (MAG) Plan for Regulation	)	
of Interstate Services of Non-Price Cap Incumbent	)	CC Docket No. 00-256
Local Exchange Carriers and Interexchange Carriers	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

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**COMMENTS OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),<sup>1</sup> through the undersigned and pursuant to Federal Communications Commission (FCC or Commission) Rules 1.415 and 1.419,<sup>2</sup> hereby submits its comments in response to the Report and Order and Second Further Notice of Proposed Rulemaking<sup>3</sup> in the above-referenced proceeding. In the Second Further Notice, the Commission seeks additional comment on two proposals that would permit optional alternative incentive regulation for rate-or-return carriers<sup>4</sup> and on unresolved issues relating to the all-or-nothing rule.<sup>5</sup>

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<sup>1</sup> USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

<sup>2</sup> 47 C.F.R. §§ 1.415 and 1.419.

<sup>3</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket Nos. 00-256 and 96-45, FCC 04-31 (rel. Feb. 26, 2004) (Report and Order or Second Further Notice).

<sup>4</sup> The two proposals cited in the Second Further Notice are the CenturyTel Proposal and the Rate-of-Return Carrier Tariff Option. See Second Further Notice ¶¶80-84.

<sup>5</sup> The Commission's rule section 61.41 is also known as the all-or-nothing rule. See 47 C.F.R. §61.41.

## DISCUSSION

### I. The FCC Should Eliminate the All-Or-Nothing Rule

When the FCC released the Report and Order in this proceeding, it modified the all-or-nothing rule to permit a rate-of-return carrier that acquires lines from a price cap carrier to convert those price cap lines back to rate-of-return regulation.<sup>6</sup> This action was certainly a step in the right direction, particularly in light of the Commission's finding that previous waivers of the all-or-nothing rule had "no discernable adverse effects with respect to the consequences that the all-or-nothing rule was designed to preclude, and no significant impact on the Commission's universal service programs."<sup>7</sup> As USTA previously advocated before the Commission, the concern that prompted the rule – improper cost shifting between a price cap affiliate and a rate-of-return affiliate – has never materialized. Further, there are already numerous safeguards other than the all-or-nothing rule, which detect and prevent improper cost shifting between price cap and rate-of-return affiliates. For example, incumbent local exchange carriers (LECs) must comply with numerous rules on accounting, separations, regulated versus unregulated services, maintenance of cost allocation manuals, affiliate transactions, and tariffing requirements. In addition, they are subject to many other regulatory checks from state regulatory agencies. Both the Commission and state regulatory agencies have effective enforcement tools available to address any abuses of their rules. Finally, with the competitive status of the telecommunications industry, and particularly the wireless industry, there is no safe harbor to which LECs can shift and recover costs. All of these measures and situations guard against improper cost shifting.

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<sup>6</sup> See Report and Order, ¶10.

<sup>7</sup> Report and Order, ¶13.

Admittedly, the Commission's modification of the all-or-nothing rule was only a limited modification.<sup>8</sup> The Commission now seeks comment on whether further modification of the all-or-nothing rule is appropriate. USTA urges the Commission to take this opportunity to completely eliminate the all-or-nothing rule because the portion of the rule that remains in effect continues to inappropriately regulate carriers on a one-size-fits-all basis. Notably, section 61.41(b) of the Commission's rules requires all affiliates (except average schedule affiliates) of a LEC that file a price cap tariff to file price cap tariffs for their interstate rates and section 61.41(d) of the Commission's rules precludes exchanges that become subject to price cap regulation from withdrawing from such regulation even upon sale of those exchanges to a new owner (*i.e.*, the "One-Way Door" rule). The all-or-nothing rule forces carriers to select one form of regulation for their high-cost and low-cost affiliates. However, LECs need the flexibility to operate all their affiliates under the form of regulation – whether the same or different for each affiliate – that is most efficient and least restrictive for updating network technology, meeting customer demand, and ultimately remaining competitive. The portion of the all-or-nothing rule that remains in effect continues to discourage small and mid-sized rural carriers from acquiring rural access lines from larger price cap companies and from making investments to improve rural access lines and to offer new and advanced services to consumers. The all-or-nothing rule must be completely eliminated so that small and mid-sized carriers are encouraged to make investments to expand and improve their networks and to serve their customers competitively.

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<sup>8</sup> See Report and Order, ¶10.

## **II. The FCC Should Permit Rate-of-Return Carriers To Choose Incentive Regulation**

The Commission and many parties recognize that alternative regulation plans can provide competitive benefits for rate-of-return companies and their consumers.<sup>9</sup> USTA agrees with this observation. In response to the Commission's request for comment on the two different proposals for alternative incentive regulation of rate-of-return carriers,<sup>10</sup> it will be important for individual companies to model the proposed plans in order to determine whether or not they will work financially for their respective study areas. USTA has not modeled either of the proposed plans and, as a result, does not provide specific comment here on the plans. However, USTA urges the Commission to permit rate-of-return carriers to be regulated under some type of alternative regulation plan and to specify that participation in such a plan is optional. Rate-of-return carriers must be able to choose whether or not to participate in an alternative regulation plan; their viability may depend on that option. The differences in the customer bases, business plans, and network structures among rate-of-return companies are significant and incentive regulation may not work for all rate-of-return carriers. To the extent that incentive regulation allows a rate-of-return carrier to remain financially viable and to reap greater economic benefits, it will most likely opt for such regulation. The Commission should encourage rate-of-return carriers to choose incentive regulation where it is feasible.

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<sup>9</sup> See Second Further Notice, ¶¶73-74.

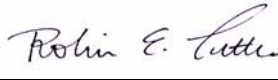
<sup>10</sup> See *infra* note 4.

**CONCLUSION**

For the reasons stated above, the Commission should completely eliminate its all-or-nothing rule and it should permit rate-of-return carriers to participate at their option in alternative incentive regulation plans.

Respectfully submitted,

**UNITED STATES TELECOM ASSOCIATION**

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April 23, 2004

# CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on April 23, 2004, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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